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09/943,609

08/29/2001

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EXAMINER

LAстра, DANIEL

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/943,609		<b>Applicant(s)</b> BEMAN ET AL.	
	<b>Examiner</b> DANIEL LASTRA		<b>Art Unit</b> 3688	
	-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --			

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 16 June 2008.

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-15 and 18-49 is/are pending in the application.

    4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-15 and 18-49 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All    b) ☐ Some \*    c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.

4) ☐ Interview Summary (PTO-413)  
    Paper No(s)/Mail Date \_\_\_\_\_.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: \_\_\_\_\_.

1. Claims 1-15 and 18-49 have been examined. Application 09/943,609 (SYSTEM AND METHOD FOR ESTIMATING AVAILABLE PAYLOAD INVENTORY) has a filing date 08/29/2001.

**Response to Amendment**

2. In response to Notice to the applicant regarding a non-compliant or non-responsive amendment filed 05/20/2008, the Applicant filed a Request for reconsideration on 06/16/2008.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-15 and 18-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. With respect to claims 1-15, 31 and 32 based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here the claims fails to meet the above requirements because the steps

are neither tied to another statutory class of invention (such as a particular apparatus). With respect to claims 18-30 and 33 said claims are recited as system claims however are claiming functional descriptive material (i.e. software) as "payload manager" is defined as software.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-30 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Said claims are not system claims.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 8, 9, 13-15, 18-20, 24, 25, 31-36, 40-43 and 49 are rejected under 35 U.S.C. 102(e) as being anticipated by Muret (US 2002/0042821).

As per claims 1, 18 and 34, Muret teaches:

A method for processing payload requests, the method comprising:

obtaining a set of criteria for delivering at least one payload, the set of criteria including one or more criterion (see paragraph 252);

generating a set of arrays corresponding to each criterion in the set of criteria, wherein each array in the set of arrays includes a plurality of array elements corresponding to periods of time (see paragraphs 55 and 117);

obtaining a request for a payload, the payload request including a set of requests having one or more criterion wherein the payload request is associated with a time (see figures 24, 28); and

incrementing a numerical identifier in the plurality of array elements corresponding to the time associated with the payload request (see figure 28, paragraphs 218-219).

As per claim 2, Muret teaches:

wherein generating a set of arrays corresponding to each criteria in the set of criteria includes:

parsing the set of criteria in a particular order (see paragraph 117); and

generating a set of arrays in an order corresponding to the particular order of the set criteria (see paragraph 117).

As per claims 8, 19 and 35, Muret teaches:

wherein the payload is an advertisement from an advertisement campaign (see paragraph 252).

As per claims 9, 20 and 36, Muret teaches:

wherein the set of payload criteria includes user demographic information (see paragraphs 53 and 284).

As per claims 13, 24 and 40, Muret teaches:

wherein the set of payload criteria includes an identifier of a content provider (see figure 27).

As per claims 25 and 41, Muret teaches:

a user information store operable to obtain a user identifier and provide user identifier criteria to the set of payload request criteria (see figure 24).

As per claims 33 and 49, Muret teaches:

wherein the payload manager is operable to generate advertisement campaign compliance data by processing the data within the set of arrays (see paragraph 252).

As per claims 14 and 42, Muret teaches:

wherein each array in the set of array includes 168 array elements (see paragraph 260, figure 28).

As per claim 31, Muret teaches:

wherein the plurality of array elements includes 168 array elements (see paragraph 260, figure 28).

As per claims 15 and 43, Muret teaches:

wherein the array elements are representative of 1 hour increments (see figure 29).

As per claim 32, Muret teaches:

wherein the plurality of array elements are representative of 1 hour increments (see figure 29).

### **Claim Rejections - 35 USC § 103**

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-12, 21-23 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muret (US 2002/0042821).

As per claims 10, 21 and 37, Muret fails to teach:

wherein the user demographic information includes a user age. However, Official Notice is taken that it is old and well known in the promotion art that user's demographic includes said user's age. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the same way that Muret would keep track of users' age that access a website the same way as keeping track of the regional location of users that access said website (see paragraph 284).

As per claims 11, 22 and 38, Muret fails to teach:

wherein the user demographic information includes a user gender. However, Official Notice is taken that it is old and well known in the promotion art that user's demographic includes said user's gender. It would have been obvious to a person of

ordinary skill in the art at the time the application was made, to know that the same way that Muret would keep track of users' gender that access a website the same way as keeping track of the regional location of users that access said website (see paragraph 284).

As per claims 12, 23 and 39, Muret teaches:

wherein the set of payload criteria includes one or more keywords (see paragraph 271).

7. Claims 3-7, 26-30 and 44-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muret (US 2002/0042821) in view of Thurston (WO 01/001318).

As per claims 3, 26 and 44, Muret fails to teach:

processing the numerical identifiers in the set of arrays to predict an estimated number of future payload requests. However, Thurston teaches a system, which forecast advertisements requests based upon users' historical activities (see page 8, lines 13-16). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Muret would use the users' historical activity request, as taught by Thurston in order to forecast the delivery of advertisements to said users for the purpose of optimizing said delivery.

As per claim 4, Muret fails to teach:

wherein the processing includes applying a trend analysis. However, Thurston teaches a system which uses trend analysis to forecast future advertisements requests (see page 10, lines 20-25). Therefore, the same argument made in claim 3 regarding this missing limitation is also made in claim 4.



As per claims 5, 6, 7, 28, 29, 30, 46, 47 and 48, Muret fails to teach:

wherein the trend analysis includes a least-squared trend analysis or linear trend analysis or set theory trend analysis. However, Official Notice is taken that it is old and well known in the business art to use least-squared, linear trend analysis or set theory trend analysis for forecasting purposes. Therefore, the same rejection applied to claim 3 regarding the trend analysis missing limitation is also made in claim 5.

As per claims 27 and 45, Muret fails to teach:

wherein the payload manager generates future inventory payload data by applying a forecasting method. However, Thurston teaches a system, which forecast advertisements requests based upon users' historical activities (see page 8, lines 13-16). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Muret would use the users' historical activity request, as taught by Thurston in order to forecast the delivery of advertisements to said users for the purpose of optimizing said delivery.

### ***Response to Arguments***

8. Applicant's arguments filed 06/16/2008 have been fully considered but they are not persuasive. The Applicant argues that Muret does not teach "generating a set of arrays corresponding to each criterion in the set of criteria for delivering a payload". The Applicant further argues that it appears that "parameters of interest" are being equated in the Office action to the "criteria" as recited in claim 1 but if Muret were teach every element of claim 1, it would be necessary, according to the Applicant, to also teach "generating a set of arrays corresponding" to each such parameters of interest. The

Examiner answers that Muret teaches monitoring using a log file (i.e. array) to track keywords, banner ads, search engines, referrals, domains, countries, browsers so website owners can monitor the performance of search engine, banner ad placements and regional campaigns (see paragraph 252). Therefore, contrary to Applicant's argument, Muret teaches Applicant's claimed limitation.

The Applicant argues that Muret does not disclose any correspondence between parameter of interest and the lines of the log file. The Examiner answers that Muret teaches monitoring the performance of search engines, banner ad placement and ad campaign in time based basis, by creating hourly, weekly and monthly reports (i.e. array) obtained from tracking log files (see paragraph 260-263). Therefore, contrary to Applicant's argument, Muret teaches Applicant's claimed limitation.

The Applicant argues that Muret does not teach "obtaining a request for a payload, the payload request including a set of requests having one or more criterion". The Examiner answers that Muret monitors keyword, domains, banner ads, referrals requests in order to determine the effectiveness of advertisements campaigns (see paragraph 252). Therefore, contrary to Applicant's argument, Muret teaches Applicant's claimed limitation.

The Applicant argues that Muret does not teach "168 array element". The Examiner answers that Muret monitors browsing activity hourly per 7 days, which is equivalent to a 168 array (see paragraph 260-261). Therefore, contrary to Applicant's argument, Muret teaches Applicant's claimed limitation.

The Applicant argues that Muret does not teach that the “set of payload criteria includes one or more keywords”. The Examiner answers that Muret tracks keyword requests in a log file in order to determine the effectiveness of advertisements campaigns (see paragraph 252). Therefore, contrary to Applicant’s argument, Muret teaches Applicant’s claimed limitation.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, James W. Myhre can be reached on (571)272-6722. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/  
Examiner, Art Unit 3688  
November 3, 2008